



Department of Administration

Division of Purchase & Contract

Joint Legislative Oversight Committee on General Government February 8, 2016



Department of Administration Players

- Secretary Bill Daughtridge
- Deputy Secretary Kathryn Johnston
- State Procurement Officer, vacant
- P&C Deputy Director, Sam Byassee



Debarment Procedures

- **Debarment intended as a remedy** for sustained, repeated or egregious conduct in breach of a State contract.
- Not intended as a punitive measure. Intended to help reduce time and effort required to be spent on contract enforcement efforts and to protect the State against contracting with vendors that have demonstrated some inability to comply with State contracting rules and requirements.
- The debarment process goes back to at least 1996.



Debarment Examples

- Repeated poor performance following several notices and attempts to cure, particularly across multiple contracts:
 - substandard work,
 - unmet commitments,
 - delivery delays or non-delivery,
 - delivery of defective or non-conforming goods.
- Failure to pay money due to State after repeated attempts to collect.
- False or deceptive statements in bid response.



Authority from the NC Administrative Code:

01 NCAC 05B.1520 DEFAULT PROCEEDINGS; DEBARMENT

... (b) The Division [of Purchase and Contract] may remove the contractor from any mailing lists which may be utilized and debar the contractor from doing business with the agency, or any agency, for a period of time at the discretion of the Division.



1. How does a company get on the list?

Two ways:

- Written complaint to P&C from agency administering the contract, with recommendation to debar or failure to pay.
- P&C follows up with agency to review problem and agency documentation.
- Notice to vendor and a debarment hearing scheduled.
- Vendor given opportunity to explain or mitigate default.
- State Purchasing Officer makes debarment determination and notifies vendor.

or...



Question #1 (answer continued)

OR:

- Agency makes written complaint to vendor on P&C form, requesting vendor to respond within 10 days or face debarment.
- Vendor fails to respond.
- Agency notifies P&C of failure to respond.
- State Purchasing Officer notifies vendor of debarment.

Common denominator: Notice to vendor and an opportunity to respond.

2. Can a company get off the list? Yes.

- Expiration of the time specified in debarment decision.
- If debarment is due to a debt to the State payment of the amount owed.



3. What is done by DOA or any other state agency to go after contractors who do not fulfill their contract?

- Discussion, warning, termination of contract
- Debarment
- Depending on nature of default, referral to Attorney General with request to proceed with a civil action for breach of contract.



4. If a company is on the list, can the owner of the company start a new company to request state contracts?

- For closely-held and non-incorporated entities, debarment order can specify that debarment applies to control group or owner(s).
- If it is determined that a proposal was submitted by a new company owned by a debarred person or entity, then the proposal will be disqualified.



5. If a debarred vendor is bought out, is the purchaser of the debarred vendor allowed to compete for contracts?

Depends on the nature of the purchase.

- If a corporate entity is purchased, but remains substantially intact, then the debarment continues.
- If it is an asset purchase or merger, then the new business is allowed to compete.

Note: There is no prohibition on an entity petitioning for modification of its debarment based on change circumstances.



6. Any other problems Purchase and Contracting has working with vendors or debarring vendors?

P&C's ability to terminate a contract for default or to debar a vendor depends on a **documented record** of problems with vendor performance and a notice to vendor of the problem.

Cannot terminate or debar vendor based on:

- · Undocumented complaints.
- Issues that were never discussed with vendor.
- Old and outdated problems.
- Oral reports to P&C, with an expectation that P&C will do "whatever is necessary" to follow-up and take action against vendor.

P&C is limited by an agency's willingness to create a record.



Other Problems

Contracts for services

- Gradual degradation of service
- Treatment like one of the family
- Lack of knowledge transfer

Contracts for goods

- Most frequent product non-compliance: failure of electrical equipment to have proper safety label applied (e.g., UL), showing compliance of entire product with national safety standards (as required by NC Department of Insurance).
- U.S. middleman selling foreign-produced goods
 - Inadequate capitalization
 - Significant quality drop between sample and purchase



Thank you.

Questions?

